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**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

The Minutes

December 17, 2001

At 9:31 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Davis, Acting Presiding Justice; Nicholson, Associate Justice; Morrison, Associate Justice; and Rios, Bailiff. Calendar Called.

**C037917 LANER ELECTRIC SUPPLY COMPANY, INC. v. FIREMANS INSURANCE
COMPANY OF NEWARK, NEW JERSEY**

Cause called. Roger J. Brothers argued for appellant. Michael E. London argued for respondent. Cause submitted.

**C038130 In re FRANK M.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v.
FRANK M.**

Cause called. Beth A. Melvin, court appointed counsel, argued for appellant. Deon C. Merene, Deputy County Counsel, argued for respondent. Cause submitted.

At 10:10 a.m., the court recessed. At 10:15 a.m., the court reconvened with Acting Presiding Justice Davis, Associate Justice Raye and Associate Justice Hull.

C036650 GOLDEN BAY FENCE PLUS IRON WORKS, INC. v. RAY WILSON CO. et al.

Cause called. Alan L. Martini argued for appellant. David E. Nemeth, Jr. argued for respondents. Cause submitted.

At 10:38 a.m., the court recessed. At 10:44 a.m., the court reconvened with Presiding Justice Scotland, Associate Justice Nicholson and Associate Justice Hull.

**C036505 AMERICAN CONTRACT SERVICES v. STATE OF CALIFORNIA and ALLIED
MOLD & DIE, INC.**

Cause called. Jennifer Dauer argued for appellant. Larry G. Raskin, Supervising Deputy Attorney General, argued for respondent. Richard Galloway Anderson argued for respondent. Cause submitted.

At 11:15 a.m., the court recessed. At 11:19 a.m., the court reconvened with Presiding Justice Scotland, Associate Justice Davis and Associate Justice Callahan.

C037261 SCHWARTZBERG et al v. WARMINGTON HOMES CALIFORNIA

Cause called. Terrence L. Butler argued for appellants. Robi H. Johnson argued for respondent. Cause submitted.

At 11:56 a.m., the court recessed. At 2:00 p.m., the court reconvened with Presiding Justice Scotland, Associate Justice Morrison and Associate Justice Kolkey.

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C033396 CROOKS v. SAMMONS TRUCKING, INC. et al.

Cause called. Steve M. Defilippis argued for appellant. Anuradha Y. Boyapati argued for respondents. Catharine A. Ching and James K. Mirabell appeared only. Cause submitted.

At 2:32 p.m., the court recessed. At 2:34 p.m., the court reconvened with Presiding Justice Scotland, Associate Justice Nicholson and Associate Justice Raye.

C032534 SANCTITY OF HUMAN LIFE NETWORK, et al. v. CA HIGHWAY PATROL

Cause called. Scott M. Kendall argued for appellant. Kenneth L. Swenson, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:20 p.m., the court recessed. At 3:26 p.m., the court reconvened with Acting Presiding Justice Davis, Associate Justice Nicholson and Associate Justice Morrison.

C036481 RATH v. SACRAMENTO COUNTY DEPUTY SHERIFFS' ASSOC.

Cause called. Christopher W. Miller argued for appellant. David E. Mastagni appeared only. Robert W. Lucas argued for respondent. George F. Allen appeared only. Cause submitted.

At 3:40 p.m., the court recessed. At 3:43 p.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Nicholson and Associate Justice Kolkey.

C035040 AEROJET-GENERAL CORPORATION v. INDUSTRIAL UNDERWRITERS INSURANCE COMPANY, et al.

Cause called. Carl L. Blumenstein argued for appellant. Scott P. DeVries appeared only. Walter T. Johnson argued for respondent. Deborah E. Beck and James R. Forbes appeared only. Cause submitted.

At 4:15 p.m., the court recessed. At 4:17 p.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Callahan and Associate Justice Kolkey.

C030874 AEROJET-GENERAL CORPORATION v. AMERICAN EXCESS INSURANCE COMPANY et al.

Cause called. Scott P. DeVries argued for appellant. Carl L. Blumenstein appeared only. Steven M. Crane argued for respondents. Cause submitted.

At 4:55 p.m., the court recessed until 9:30 a.m., Tuesday, January 22, 2002.

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C033407 THE PEOPLE v. BENNETT (Not for Publication)
We reverse both of the one-year enhancements imposed pursuant to section 667.5, subdivision (b). In all other respects, the judgment is affirmed.
 DAVIS, J.
We concur: Blease, Acting P.J.
 Callahan, J.

C038609 THE PEOPLE v. HAMILTON (Not for Publication)
The judgment is affirmed.
 RAYE, J.
We concur: Scotland, P.J.
 Davis, J.

C034719 MARTINEZ v. MANTECA-LATHROP FIRE DISTRICT et al. (Not for Publication)
C034864
The judgment in C034719 is affirmed. The request for sanctions deferred in our order of December 20, 2000, is denied. The matter is remanded to determine the reasonable legal fees the defendants incurred in responding to plaintiff's appeal. The defendants shall also recover costs of appeal. The order in C034864 is affirmed. The plaintiff shall recover costs of appeal.
 DAVIS, Acting P.J.
We concur: Morrison, J.
 Callahan, J.

C037411 In re LAURIE ELLEN MILLER (Not for Publication)
The order to show cause, issued April 12, 2001, in this proceeding, is discharged, and the petition for writ of habeas corpus is denied.
 BLEASE, J.
We concur: Scotland, P.J.
 Callahan, J.

December 18, 2001

C035003 THE PEOPLE v. RAY (Not for Publication)
The trial court's dismissal of three offenses and related enhancement allegations in case numbers P99CRF0239 and P99CRF0271 are reversed. On remand, defendant may withdraw all of his "no contest" pleas, his admission to an enhancement allegation, and his admissions to violating probation in case numbers WS98F00353, P99CRM0541 and P99CRF0113. These five matters shall then proceed according to law.
 NICHOLSON, J.
We concur: Blease, Acting P.J.
 Raye, J.

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December 18, 2001, continued

- C037160 THE PEOPLE v. ABBOTT (Not for Publication)**
The judgment is affirmed.
 SCOTLAND, P.J.
I concur: Nicholson, J.
I concur in the result:
 Blease, J.
- C037829 THE PEOPLE v. SHOEMAKER (Not for Publication)**
The judgment is affirmed.
 SCOTLAND, P.J.
I concur: Nicholson, J.
I concur in the result:
 Blease, J.
- C035716 CHUANG et al. v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (Not for Publication)**
The judgment is affirmed.
 CALLAHAN, J.
We concur: Scotland, P.J.
 Hull, J.
- C036619 KAFATI v. METHERELL (Not for Publication)**
The judgment is reversed. The trial court is directed to enter a new order granting Kafati leave to amend her complaint as of June 28, 2000. Kafati shall recover her costs on appeal.
 MORRISON, J.
We concur: Sims, Acting P.J.
 Kolkey, J.
- C038791 In re KENDRIEL G. et al.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. KEEVAN G. (Not for Publication)**
The orders of the juvenile court terminating the parental rights of the parents are reversed. (Cal. Rules of Court, rule 1463(g), and the matter is remanded to the juvenile court with directions to order DHHS to provide the BIA with proper notice of the proceedings under the Act. If, after receiving notice under the Act, no tribe indicates the minors are Indian children within the meaning of the Act, then the juvenile court shall reinstate the orders terminating parental rights.
 MORRISON, J.
We concur: Sims, Acting P.J.
 Davis, J.

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December 19, 2001

- C035981 THE PEOPLE v. BONE (Not for Publication)**
The judgment is affirmed.
 SCOTLAND, P.J.
We concur: Davis, J.
 Nicholson, J.
- C036323 THE PEOPLE v. WAYMEYER (Not for Publication)**
The judgment is affirmed.
 CALLAHAN, J.
We concur: Scotland, P.J.
 Hull, J.
- C038126 THE PEOPLE v. FRITZ (Not for Publication)**
The judgment is affirmed.
 CALLAHAN, J.
We concur: Sims, Acting P.J.
 Kolkey, J.
- C036831 MONGE v. GERIG (Not for Publication)**
The August 22, 2000, judgment (order) is reversed. Gerig shall recover her costs on appeal.
 SIMS, Acting P.J.
We concur: Nicholson, J.
 Morrison, J.
- C038366 GALLOWAY v. GALLOWAY (Not for Publication)**
The judgment is affirmed. The parties shall bear their own costs on appeal.
 MORRISON, J.
We concur: Blease, Acting P.J.
 Kolkey, J.

December 20, 2001

- C035501 THE PEOPLE v. SAGE (Not for Publication)**
The matter is remanded to the trial court to allow defendant the opportunity to withdraw the pleas and, if he does so, for further proceedings. Should he fail to withdraw the pleas within 60 days after the filing of the remittitur, the judgment is affirmed.
 HULL, J.
We concur: Raye, Acting P.J.
 Morrison, J.

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December 20, 2001, continued

- C035606 THE PEOPLE v. SPOONER (Not for Publication)**
The judgment is reversed and remanded for further proceedings consistent with this opinion.
 DAVIS, J.
We concur: Sims, Acting P.J.
 Hull, J.
- C035870 THE PEOPLE v. HAWLEY (Not for Publication)**
The judgment is affirmed.
 HULL, J.
We concur: Sims, Acting P.J.
 Callahan, J.
- C0C35989 THE PEOPLE v. LONDON (Not for Publication)**
The judgment is affirmed.
 CALLAHAN, J.
We concur: Sims, Acting P.J.
 Hull, J.
- C036585 THE PEOPLE v. JOHNSON (Not for Publication)**
The judgment is affirmed. The trial court shall prepare an amended abstract of judgment to reflect the initial three-year prison sentence for violation of section 246 and send a certified copy of the amended abstract to the Department of Corrections.
 DAVIS, J.
We concur: Sims, Acting P.J.
 Hull, J.
- C036884 THE PEOPLE v. VERRY (Not for Publication)**
The judgment is affirmed.
 SIMS, Acting P.J.
We concur: Raye, J.
 Callahan, J.
- C037203 THE PEOPLE v. WOODS (Not for Publication)**
The judgment is affirmed.
 BLEASE, Acting P.J.
We concur: Sims, J.
 Davis, J.
- C037704 THE PEOPLE v. BALDINE (Certified for Partial Publication)**
The judgment is affirmed. (CERTIFIED FOR PARTIAL PUBLICATION.)
 MORRISON, J.
We concur: Sims, Acting P.J.
 Hull, J.

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December 20, 2001, continued

C031665 **E. I. DuPONT, INC. v. FORMA-PACK, INC. (Not for Publication)**
The judgment is affirmed.
 NICHOLSON, J.
We concur: Scotland, P.J.
 Davis, J.

C035264 **DOYEL v. TEACHERS' RETIREMENT BOARD**
 (Not for Publication)
The judgment is affirmed. The parties shall bear their own costs on appeal.
 NICHOLSON, J.
I concur: Scotland, P.J.
I concur for the reasons set forth in section I, II, and the first paragraph of
section IV. Davis, J.

C038094 **MELLO v. WANLAND et al. and CONKLING**
 (Not for Publication)
The sanction order is affirmed. Shannon Mello shall recover her costs on
appeal.
 SIMS, Acting P.J.
We concur: Raye, J.
 Callahan, J.

C038202 **GONZALEZ v. GONZALEZ** **(Not for Publication)**
The judgment is affirmed. Respondent shall recover her costs on appeal.
 DAVIS, J.
We concur: Scotland, P.J.
 Nicholson, J.

C038130 **In re FRANK M. III; SACRAMENTO COUNTY DEPARTMENT OF HEALTH**
AND HUMAN SERVICES v. FRANK M. and FRANK M. III
 (Not for Publication)
The appeal is dismissed.
 DAVIS, Acting P.J.
We concur: Nicholson, J.
 Morrison, J.

C034582 **THE PEOPLE v. BYRD** **(Not for Publication)**
THE COURT:
It is ordered that the opinion filed herein on November 21, 2001, be modified as
follows:...There is no change in the judgment.
Appellant's petition for rehearing is denied.
FOR THE COURT:
 Raye, Acting P.J.
 Morrison, J.
 Hull, J.

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December 21, 2001

- C035117 THE PEOPLE v. BRIGANCE (Not for Publication)**
The judgment is affirmed.
 HULL, J.
We concur: Scotland, P.J.
 Callahan, J.
- C036555 THE PEOPLE v. ORR (Not for Publication)**
The judgment is affirmed.
 DAVIS, J.
We concur: Blease, Acting P.J.
 Nicholson, J.
- C033396 CROOKS v. SAMMONS TRUCKING, INC. et al. (Not for Publication)**
The judgment is reversed and the action is remanded for a new trial on all issues. Plaintiff shall recover her costs on appeal. (Cal Rule of Court, rule 26 (a)(3).)
 KOLKEY, J.
We concur: Scotland, P.J.
 Morrison, J.
- C035303 BREEZE v. GRANT et al. (Not for Publication)**
The order denying plaintiff's request for a preliminary injunction is affirmed.
 SCOTLAND, P.J.
We concur: Davis, J.
 Nicholson, J.
- C036505 AMERICAN CONTRACT SERVICES v. ALLIED MOLD & DIE, INC. and LOCKYER (Certified for Publication)**
The judgment is affirmed. (CERTIFIED FOR PUBLICATION.)
 HULL, J.
We concur: Scotland, P.J.
 Nicholson, J.
- C036724 SMITH v. COUNTY OF EL DORADO et al. (Not for Publication)**
The judgment and order of dismissal are affirmed. Defendants and respondents shall recover their costs.
 CALLAHAN, J.
We concur: Scotland, P.J.
 Hull, J.